

“Technical Barriers to Trade and Sanitary and Phyto-
Sanitary Issues Facing Developing Countries
- Role of the Private Sector-

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The WTO Genesis

- ▶ The General Agreement on Trade and Tariff (GATT) came into existence in 1947.
- ▶ It sought substantial reduction in tariff and other barriers to trade and elimination of discriminatory treatment in international commerce.
- ▶ Eight rounds of negotiations had taken place during five decades of its existence.
- ▶ WTO came into existence on 1-1-1995 with the conclusion of the Uruguay Round Multilateral Trade Negotiations at Marrakesh on 15th April 1994.

Food and Agricultural Products under WTO Agreements

- ▶ The creation of the World Trade Organization, food and agricultural products were brought fully into the fold of international trading rules.
- ▶ Tariffs and quantitative restrictions were significantly reduced, regulatory measures have come to center stage as potential sources of trade restrictions.
- ▶ Such measures, designed to ensure food safety, consumer protection, and plant and animal health, are regulated by two agreements annexed to the general trade accords: the Sanitary and Phyto-sanitary (SPS) Agreement and the Technical Barriers to Trade (TBT) Agreement.

Why are SPS and TBT Measures Important? (Quick Facts)

- ▶ Private sector standards and government technical regulations directly affect at least 80 percent of world trade (OECD, 1999).
- ▶ Standards and technical regulations directly affect at least \$7 trillion in world trade (U.S. Congress, 2005).
- ▶ The SPS agreement relates to questions of food safety as well as plant and animal health.
- ▶ Together, the SPS and TBT agreements cover the full range of food-related standards, including quality and safety as well as other areas such as labelling, consumer protection, biotechnology, food irradiation and the production of “organic” foods.

What is a Sanitary or Phytosanitary Measure?

“Any Measure applied:

- a) To protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- b) To protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
- c) To protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
- d) To prevent or limit other damage within the territory of the member from entry, establishment or spread of pests.”*

* WTO definition from SPS Agreement Annex A

What is Technical Regulation?

► Definitions:

- *Technical regulation (TR)*: a document setting out product characteristics or their related processes and production methods with which compliance is mandatory (includes labeling, packaging, symbols, terminology etc.)
- *Standard*: a document approved by a recognized body that provides for common and repeated use, rules, guidelines, or characteristics for products or related processes and production methods, with which compliance is voluntary.
- *Conformity assessment procedure (CAPs)*: a procedure used to determine that requirements in TRs and standards are met (includes sampling, testing, inspection, evaluation, registration, etc.).*

*WTO definition from TBT Agreement Annex 1

Coverage of the SPS versus TBT Agreements

- ▶ SPS Agreement (Annex A) covers measures to protect life or health from risks arising from:
 - Pests and diseases
 - Additives, contaminants, toxins or disease-causing organisms in foods, beverages, feedstuffs

- ▶ In other words, SPS deals with food safety.

- ▶ There is nothing in Annex A about quality, product description, diet/nutrition, conformity assessment, and labeling and packaging issues not directly related to food safety – this is where TBT comes in.

Examples of SPS/TBT Measures

Examples of SPS measures:

- ▶ Additives in food or drink
- ▶ Plant/animal quarantine
- ▶ Certification related to food safety, animal or plant health
- ▶ Labelling requirements directly related to food safety
- ▶ Residues of veterinary drugs or pesticides in food or drink
- ▶ Inspection of food
- ▶ Preventing disease or pests spreading to country
- ▶ etc

Examples of TBT measures:

- ▶ Motor vehicle safety standards
- ▶ Testing of telecommunications equipment
- ▶ Labelling of food and drugs
- ▶ Packaging requirements for food
- ▶ Regulations for the safety of electrical appliances
- ▶ Labelling of mattresses and pillows
- ▶ Certification of building materials
- ▶ Safety regulations for toys
- ▶ etc

SPS Agreement- Principal Elements (1/4)

Fundamental rights and obligations.

- ▶ WTO member countries may put into place SPS measures to protect the life and health of their citizens, animals and plants.
- ▶ These measures must be founded on clear scientific evidence and must not constitute a disguised restriction to trade.

Harmonization.

- ▶ Countries should aim to base their SPS measures on international standards, regulations or guidelines when these exist. Such internationally agreed measures are automatically accepted as justifiable.
- ▶ Countries are encouraged to participate in the work of international standard-setting bodies, in particular the Commission of the Codex Alimentarius (food safety issues), the World Organization for Animal Health (OIE) (animal health issues), and the International Plant Protection Convention (IPPC) (plant health issues)

SPS Agreement- Principal Elements (2/4)

Risk assessment.

- ▶ Countries can introduce new measures, more stringent than international standards, as long as they provide scientific evidence that this is necessary to protect human, animal or plant health.
- ▶ Appropriate methods of risk assessment must be applied in these instances. When scientific evidence is insufficient, temporary measures may be put into place based on available information.

Adaptation to regional conditions.

- ▶ A clause introducing the possibility to consider specific zones as pest or disease-free for trade purposes, with rights of inspection by importers

SPS Agreement- Principal Elements (3/4)

Transparency.

- ▶ Countries must rapidly make public all SPS measures envisaged, including details on the methods of risk assessment used to determine protection levels and the means of inspection to be applied, in order to permit potential exporters to familiarize themselves in due time.
- ▶ Notification for new measures should generally occur with a minimum delay of 45 to 60 days before enactment, except in special cases where an imminent danger exists.

Technical assistance.

- ▶ Special assistance (technical assistance) is foreseen for developing countries in order to help them to meet technical requirements of SPS measures for trade.

SPS Agreement- Principal Elements (4/4)

Differential and special treatment

- ▶ Member countries agree to take into account the particular needs of developing countries when putting into place SPS measures, for instance by giving them a longer lead time to comply with new measures whenever possible.

Enquiry Point and Notification Authority

- ▶ Members shall designate a **single Central Government Authority** to implement the notification procedures (paragraphs 5, 6, 7 and 8 of Article 10 SPS Annex B)
- ▶ Members shall ensure that **one enquiry** point exists responsible for providing answers to all reasonable questions from interested members (Article 3 Annex B of SPS Annex)

TBT Agreement- Principal Elements (1/3)

- ▶ The TBT Agreement covers technical standards for all products, industrial as well as agricultural.
- ▶ For the latter, it covers the range of aspects linked to product quality, nutritional content, labelling, and methods of analysis not directly covered by the SPS agreement.
- ▶ This includes a large number of measures aimed at protecting consumers against fraud.
- ▶ The overriding principles are, once again, that technical measures must be justified, transparent, and non-discriminatory (See principal elements of SPS Agreement)

TBT Agreement- Principal Elements (2/3)

- ▶ Purpose of the Agreement:
 - Encourage the development and use of international standards and conformity assessment systems;
 - Prevent the use of technical requirements as unjustifiable trade barriers;
 - Prevent deceptive trade practices.
- ▶ The TBT Agreement establishes rights of Members:
 - to ensure the quality of its exports,
 - to protect human, animal or plant health and life,
 - to protect the environment,
 - or to prevent deceptive practices, at the levels considered appropriate.

TBT Agreement- Principal Elements (3/3)

Technical Assistance and Special and Differential treatment

- ▶ Special assistance (technical assistance) is foreseen for developing countries in order to help them to meet technical requirements of TBT
- ▶ Special and Differential Treatment is also foreseen for developing countries

Enquiry Point and Notification Authority

- ▶ Members shall designate a **single Central Government Authority** to implement the notification procedures (TBT Agreement Article 10.10)
- ▶ Members shall ensure that **one enquiry** point exists responsible for providing answers to all reasonable questions from interested members (TBT Agreement Article 10.1)

Impact of the SPS and TBT Agreements on Developing Countries

- ▶ The SPS and TBT Agreements and the corresponding measures have enhanced **transparency**, set the basis for international **harmonization** of national SPS and TBT measures and taken into account the specific situations and problems of developing countries and their needs for **enhanced levels of technical assistance**.
- ▶ Together with the reduction in tariffs and quantitative barriers to trade in food and agricultural products agreed to in the Uruguay Round, they have **raised the potential access of developing countries to international markets**.
- ▶ This new context should have wider positive implications for developing country food and agricultural sectors, leading to **overall improvements in quality** management, the quality of products for the domestic market and enhanced export potential

SPS and TBT Issues Facing Developing Countries (1/2)

- ▶ Many developing countries are finding it difficult to meet the SPS and TBT measures of the developed countries, and are concerned that in practice, their access to export markets for some food and agricultural products is being hindered, rather than encouraged, in the wake of the Agreements.
- ▶ Developing countries find that their advanced trading partners do not adequately take into account their needs when setting SPS standards, that the time allowed between notification and implementation of SPS requirements is too short,
- ▶ Insufficient technical assistance is provided to help them cope with the new trading environment

SPS and TBT Issues Facing Developing Countries (2/2)

- ▶ **Ineffective levels of participation** of most developing countries in the mechanisms of the SPS and TBT Agreement and in the development of SPS and TBT related measures.
- ▶ **Limited ability to participate effectively in the transparency mechanism** (no expertise to respond to notifications within the 60-day period). They also
- ▶ **Lack the expertise to carry out risk assessment** when national TBT/SPS measures are different from those of developed countries, or to participate in dispute settlement procedures of the WTO, either as defendant or complainant.
- ▶ **Finally, limited participation in international standards setting bodies** (Codex, IPPC, and OIE) both in quantity and quality and does not ensure proper consideration of national concerns and interests.

Potential Solutions - Government Level

- ▶ Greater levels and more appropriate technical assistance. This needs to be directed to gaining technical expertise and developing domestic quality control systems, to enhance developing country capability to comply with SPS/TBT requirements.
- ▶ Legal assistance, to enable developing countries to participate in dispute settlement.
- ▶ Revision of developing countries' own administrative arrangements to facilitate meeting SPS /TBT requirements

Potential Solutions – Role of Private Sector

1. Track the Changes

- ▶ The business sector can avoid surprises in export markets by keeping track of notifications on measures regarding their products. For food and agricultural products, notifications concerning health and safety fall under the SPS Agreement, although the Agreement on Technical Barriers to Trade (TBT) also imposes some relevant notification requirements (such as for packaging).
- ▶ This requires strong collaboration between a country's national enquiry point and its business sector. This does not always exist.
- ▶ The business sector in developing countries needs to persuade its governments to set up systems to monitor notifications relating to SPS and TBT measures.
- ▶ Brazil and Canada are examples of countries that have established mechanisms to alert business of changes that may affect them.
- ▶ Business can track mandatory SPS and TBT measures in this way,

Potential Solutions – Role of Private Sector

2. Public –Private coordination

- ▶ As well as tracking SPS and TBT measures, developing countries can become more proactive in influencing the shape of measures before the country putting them forward finalizes them.
- ▶ Each WTO member has the right to comment after a country signals a changing SPS or TBT requirement. To comment effectively, the various stakeholders need to collaborate closely, notably the public sector and business, so that trade officials can object to any illegitimate TBT/SPS barriers either directly with the country concerned or through the SPS/TBT Committee at the WTO.
- ▶ In some countries, creating a national SPS Committee and a national TBT Committee has proved highly effective. Such a committees brings together relevant ministries and private sector organizations such as chambers of agriculture, commerce and industry, as well as exporters' associations.
- ▶ Creating focus groups from the Private Sector (per industry- such as food industry) could be very helpful in highlighting issues of concern

Potential Solutions – Role of Private Sector

3. Raising national standards (1)

- ▶ Exporting enterprises have to produce to the requirements of their target markets and demonstrate acceptable conformity to these requirements. Business sector stakeholders in developing countries can take a variety of steps to move towards these goals:
- ▶ **Help to plug gaps.** Although the public sector is responsible for providing the necessary infrastructure for import control and export certification in the country, the private sector can complement its efforts. For instance, it could set up laboratory facilities/ participate in the funding where there is a gap in public sector capacity.
- ▶ **Start with voluntary standards.** Further, private sector organizations may set up voluntary standards to help a national industry achieve a collective minimum standard, as a first step to guide exporters towards complying with stricter SPS / TBT requirements in export markets.

Potential Solutions – Role of Private Sector

3. Raising national standards (2)

Partner with importers

- ▶ Collaboration between businesses in exporting and importing countries can go a long way towards facilitating entry into target markets. Example: The Liaison Committee Europe-Africa-Caribbean-Pacific (COLEACP)
- ▶ COLEACP, is an inter-professional association of exporters, importers and other stakeholders in the EU's horticultural trade with African, Caribbean and Pacific Group (ACP) countries.
- ▶ The body works to harmonize relations between producers and exporters of the ACP states and importers of fresh or processed fruit and vegetables, and of flowers and plants.
- ▶ It also supports the promotion of ACP horticultural produce and is implementing a Pesticide Initiative Programme to assist exporters from ACP states to understand and react to the impending EU pesticide residue requirements

Potential Solutions – Role of Private Sector

4. Planning market access

- ▶ For all countries, a combined public-private approach to identify where SPS and TBT barriers might impact existing or potential exports most adversely is essential.
- ▶ The business community's experience can help government trade officials to understand where problems or opportunities exist for a country's exports.
- ▶ Through this consultation process, governments can assign priorities for market access efforts, on the basis of the probability of success and the value of potential exports.
- ▶ Once governments are convinced that there is a legitimate case to take up on behalf of their exporters, they can take the following consecutive steps to smooth the flow of trade:

Potential Solutions – Role of Private Sector

5. The power of information

► Examples

- **Canada:** The enquiry point for SPS and TBT has developed a system which automatically enters notifications received from WTO into an online database, coded by subject areas, using the international classification of standards. Canadian companies interested in receiving notification information select their area of interest. This ensures that they receive only relevant notifications.
- **Brazil:** The enquiry point for TBT has developed a tool called “Alerta Exportador” which enables exporters to receive daily e-mail updates — without any associated cost — on new WTO notifications on technical regulations and conformity assessment procedures.
- These systems enable enquiry points to cover all business sectors, without inundating firms with irrelevant information

Current Set up in Lebanon

- ▶ LIBNOR is the Enquiry Point for TBT in Lebanon
- ▶ The Ministry of Agriculture is the Enquiry point for SPS
- ▶ The Ministry of Economy and Trade is the Notification Authority (vis a vis the WTO)

What must be done in Lebanon to meet the transparency requirements of the TBT/ SPS Agreements?

- ▶ Understand the Requirements
- ▶ Assess the way SPS measures, technical regulations, standards and conformity assessment procedures are developed (change the processes as required)
- ▶ Establish operational TBT and SPS Enquiry Points (Step 1. Build reliable data bases that are updated on regular basis)
- ▶ Good communication between the regulatory authorities in Lebanon and the Notification Authority
- ▶ Good communication between the TBT Enquiry Point , SPS Enquiry Point and the Notification Authority.